

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE:	)	
	)	
STEVE D. HEKKEL,	)	BANKRUPTCY NO. 04-64938 JPK
	)	Chapter 11
Debtor.	)	

ORDER AUTHORIZING SALE OF REAL ESTATE FREE AND CLEAR OF LIENS

On July 27, 2006, the debtor, counsel, filed a Motion to allow Sale of Property Free and Clear of Liens. As established by docket record entry #278, notice of the motion was provided to all creditors and parties-in-interest in this case, and no effective objection to the motion or request for hearing with respect to the motion was filed.

Paragraph 4 of the motion identifies seven parties having liens or other interests in the subject property, and paragraph 5 of the motion proposes to disburse the proceeds of sale at the time of closing "in the order of the priority of liens as determined by the Title Policy." Preliminary title insurance reports (and not title policies) are customarily utilized as a source of information for establishing the nature and extent of interests in real property, and those reports contain facts which, when applied to applicable legal principles, can many times determine the ordering of priority of liens or interests in the subject real property. However, preliminary title reports do not in and of themselves establish an order of priority of liens or interests, and the Court is unable to determine from the record the ordering of the priority of the liens/interests stated in paragraph 4 with respect to the real property sought to be sold. The form of order tendered with respect to this motion provided for "payment of the proceeds according to the priority of liens," and further provided "that if there are insufficient funds to pay in full the claims of the judgment lienholders, the liens will be voided, satisfied and released as to the real estate . . .". Judgment liens cannot be avoided by means of a motion to sell real property pursuant to the provisions of 11 U.S.C. § 363 – that procedure is undertaken pursuant to 11 U.S.C.

§ 522(f), pursuant to the specific procedures established by that statute and by the rules of the United States Bankruptcy Court for the Northern District of Indiana, particularly N.D.Ind.L.B.R. B-2002-2(a)(5). In addition, this latter provision may be utilized only to avoid judgment liens to the extent of impairment of an exemption, and it is not a substitute for a proceeding to determine the priority of liens in real property, which must be undertaken by means of an adversary proceeding pursuant to Fed. R. Bank. P. 7001(2). Because there has been no judicial determination of the extent of priority of liens in this property, and no evidence has been supplied in the record that holders of liens and interests in the subject property have agreed themselves to the priority, all the Court can do with respect to the debtor's motion is approve the sale, leaving determination of priorities to another day by means of an appropriate procedure.

IT IS ORDERED as follows:

1. The debtor is authorized to sell the real property commonly described as 6931-39 Calumet Avenue, Hammond, Indiana, to Brent Skrzekut, pursuant to the terms of the contract of sale attached as the Exhibit "A" to the debtor's motion.
2. Said sale shall be free and clear of all liens and encumbrances, with liens and encumbrances to attach to the proceeds of sale.
3. The debtor is authorized to sign, execute and deliver such documents as are necessary to effect the sale.
4. From the proceeds of sale, the following payments are authorized to be made at closing:
  - a. All real property taxes, sewage assessments, and special assessments constituting a lien against the subject real estate;
  - b. Ordinary and necessary expenses of closing, including proration credits;
  - c. Any commission authorized by a contract approved by the Court for the

employment of a real estate agent or other broker with respect to the sale.

5. The balance of the sales proceeds – after deduction of the payments designated in the immediately preceding paragraph – shall be deposited in the trust account of the debtor's counsel, pending further order of the Court with respect to the priority of liens and interests in the subject real estate to be entered in an adversary proceeding commenced by the debtor for the purposes of that determination.

6. Pursuant to Fed. R. Bank. P. 6001(f)(1) and N.D.Ind.L.B.R. B-6004-1(c), a report of sale shall be filed which includes an itemized statement of the property sold, the name of the purchaser and the price received for the property, including itemization of expenses deducted from the proceeds of sale – the closing statement used by a title insurance company or other closing agent customarily used in real estate sales transactions shall constitute compliance with this paragraph, provided that the balance of the sales proceeds disbursed and the identity of the person or entity to whom those proceeds were disbursed is clearly identified in that document. Said report shall be filed with the Clerk within 10 days of completion of the sale, and shall be served on all parties as set out in N.D.Ind.L.B.R. B-6004-1(a).

7. The debtor shall commence an adversary proceeding to determine the priority of liens and interests for disbursement of the proceeds deposited in the debtor's attorney's trust account or file a stipulation as to disbursement of the proceeds as agreed to by the debtor and all parties in paragraph 4 of the motion, within 20 days of completion of the sale.

Dated at Hammond, Indiana on September 21, 2006.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
Debtor, Attorney for Debtor  
U.S. Trustee